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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Major Joel L. Bennett, U.S. Army (Ret.)

File: B-251159

Date: March 16, 1993

DIGEST

The General Accounting Office will not disturb an agency's determination of the net weight of a service member's household goods shipment in the absence of clear error or fraud. The burden of establishing fraud rests on the party alleging it.

DECISION

Major Joel L. Bennett, now retired from the U.S. Army, requests review of our Claims Group's settlement upholding the Defense Finance & Accounting Service's (DFAS) set-off of \$2,601.54 from Major Bennett's pay to recover transportation charges for the weight of his household goods that exceeded the weight authorized for a permanent change of station move. We affirm the Claims Group's settlement.

When Major Bennett transferred from Germany to Fort Lewis, Washington, in 1989, his household goods were contained in three separate shipments. One shipment, picked up in Germany on July 12, 1989, had a net weight of 16,427 pounds. The delivering agent furnished a certified true copy of a scale ticket, dated October 26, 1989, showing destination reweigh net weight for that shipment at 16,210 pounds. Using the reweigh weight, the weight of this and the two other shipments (excluding the weight of professional books, papers and equipment and packing materials) was 4,144 pounds over the 17,000 pound weight allowance.

Major Bennett alleges that both the origin and destination agents misrepresented the net weight of the July 12 shipment as being approximately 3,000 pounds greater than the actual weight. Major Bennett says that the origin agent's driver effectively denied him the right to accompany the shipment to the scale, telling him that the crew intended to go to a party after departing his old residence and that the shipment would not be weighed until late that night or the next day. Major Bennett also contends that the destination agent never reweighed the shipment, despite the government's request for such a reweigh, and that the destination agent

fabricated a reweigh certificate. Major Bennett argues that denial of his right to accompany the shipment to the scales in Germany, as well as the failure to reweigh the shipment in Washington, violated the Department of Defense Personal Property Traffic Management Regulation, DoD 4500.34-R.

In support of his allegations, Major Bennett notes the following: the estimated weight of the July 12 shipment was 13,160 pounds; there were slightly more than 13 inventory pages, and on average each inventory page involves about 1,000 pounds of household goods; there were 10.5 containers, and on average each container weighs about 1,500 pounds; the driver at destination denied that his company reweighed the July 12 shipment; based on the weight of the goods he moved to Germany, the weight he was charged was unlikely; and the government's failure to supervise or observe shipment weighing (e.g., use an independent or government-owned scale) created an atmosphere that allowed, and even encouraged, weight "bumping."

The question of whether and to what extent authorized weights have been exceeded is one of fact primarily for administrative determination, which we ordinarily will not question in the absence of fraud or clear error. The burden of establishing fraud rests on the party alleging it and must be proven by evidence sufficient to overcome the presumption in favor of honesty and fair dealing. Circumstantial evidence is competent if it offers a clear inference of fraud and amounts to more than mere suspicion or conjecture. We will not, however, infer fraud if the circumstances are as consistent with honesty and fair dealing as with dishonesty. See Captain Roger L. Reasonover, Jr., USN, B-213543, Dec. 7, 1983, and decisions cited therein.

Major Bennett has not proven fraud. In effect, he asks us to infer that two carriers involved in the shipment independently and wilfully misrepresented the shipment weight; the possibility of independent acts of fraud by two agents in the same transaction is clearly more remote than a single act of fraud. For the reasons set out below, the cumulative effect of the evidence offered is insufficient, in our view, to prove fraud.

-- The various weight estimations and the evidence of the weight of Major Bennett's household goods in a prior move are not relevant to determining the weight of a shipment, since goods obviously may have been included or excluded. See John V. Olson, B-219158, Jan. 13, 1986.

-- While the delivering driver's statement is some evidence indicating that the reweigh did not take

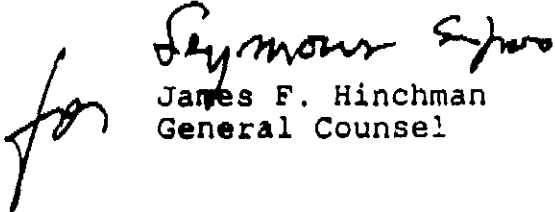
place, it is rebutted by the company owner's explanatory statement that the driver did not work the evening of the reweigh, and that only the owner and one employee could certify weights. In response, Major Bennett merely disputes the owner's statement, alleging that the owner fabricated the reweigh certificate months after the delivery.

-- We have held that it is too speculative to infer fraud merely because the carrier used its own certified scale, or that of a related company, instead of an independent scale. The bare opportunity to "bump" the weights of a shipment is not evidence of fraud. See Captain Roger L. Reasonover, Jr., USN, B-213543, supra.

-- Even if the origin agent did not afford Major Bennett an immediate opportunity to accompany the shipment to the scale, there is no indication that the Major contacted the transportation officer to assure this opportunity. Also, we have held that administrative regulations like the one Major Bennett references involving the right to a reweigh are instructional or procedural; they do not provide a basis for relieving a government employee of excess weight charges when the weight of the household goods was otherwise properly established. See John V. Olson, B-219158, supra. Here, DFAS found that a proper reweigh established the basis for the applicable charges.

Finally, Major Bennett complains that our Claims Group did not independently investigate his claim, and instead only relied on his submissions and evidence already in the record. However, it is the claimant that has the burden of establishing the liability of the United States and his right to payment. As the regulations under which we resolve claims like these provide, our Office does not conduct investigations or adversary hearings in adjudicating claims, but relies on the written record presented by the parties. 4 C.F.R. § 31.7 (1992); see also Frank A. Barone, B-229439, May 25, 1988.

Since Major Bennett has not established fraud or clear error, the Claims Group's settlement is affirmed.


James F. Hinchman
General Counsel